

CORPORATE FRANCHISE AND INCOME TAX**AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends the Corporate Franchise and Income Taxes chapter.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "foreign operating company" to provide requirements relating to property and payroll located outside the United States;
- ▶ addresses provisions relating to subtractions from unadjusted income, including a subtraction for a foreign operating company; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect for a taxable year beginning on or after January 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-7-101, as last amended by Laws of Utah 2009, Chapter 312

59-7-105, as last amended by Laws of Utah 2008, Chapter 389

59-7-106, as last amended by Laws of Utah 2009, Chapter 312

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-7-101** is amended to read:

59-7-101. Definitions.

As used in this chapter:

(1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105 and 59-7-106.

(2) (a) "Affiliated group" means one or more chains of corporations that are connected through stock ownership with a common parent corporation that meet the following requirements:

(i) at least 80% of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and

(ii) the common parent directly owns at least 80% of the stock of at least one of the corporations in the group.

(b) "Affiliated group" does not include corporations that are qualified to do business but are not otherwise doing business in this state.

(c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(3) "Apportionable income" means adjusted income less nonbusiness income net of related expenses, to the extent included in adjusted income.

(4) "Apportioned income" means apportionable income multiplied by the apportionment fraction as determined in Section 59-7-311.

(5) "Business income" is as defined in Section 59-7-302.

(6) (a) "Captive real estate investment trust" means a real estate investment trust if:

(i) the shares or beneficial interests of the real estate investment trust are not regularly traded on an established securities market; and

(ii) more than 50% of the voting power or value of the shares or beneficial interests of the real estate investment trust are directly, indirectly, or constructively:

(A) owned by a controlling entity of the real estate investment trust; or

(B) controlled by a controlling entity of the real estate investment trust.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."

(7) (a) "Common ownership" means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of:

(i) a parent-subsidary controlled group as defined in Section 1563, Internal Revenue Code, except that 50% shall be substituted for 80%;

(ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue

63 Code, except that 50% shall be substituted for 80%; or
64 (iii) three or more corporations each of which is a member of a group of corporations
65 described in Subsection (2)(a)(i) or ~~[(2)(a)]~~(ii), and one of which is:
66 (A) a common parent corporation included in a group of corporations described in
67 Subsection (2)(a)(i); and
68 (B) included in a group of corporations described in Subsection (2)(a)(ii).
69 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
70 Internal Revenue Code.
71 (8) (a) "Controlling entity of a captive real estate investment trust" means an entity
72 that:
73 (i) is treated as an association taxable as a corporation under the Internal Revenue
74 Code;
75 (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue
76 Code; and
77 (iii) directly, indirectly, or constructively holds more than 50% of:
78 (A) the voting power of a captive real estate investment trust; or
79 (B) the value of the shares or beneficial interests of a captive real estate investment
80 trust.
81 (b) "Controlling entity of a captive real estate investment trust" does not include:
82 (i) a real estate investment trust, except for a captive real estate investment trust;
83 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal
84 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real
85 estate investment trust; or
86 (iii) a foreign real estate investment trust.
87 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
88 commission may make rules defining "established securities market."
89 (9) "Corporate return" or "return" includes a combined report.
90 (10) "Corporation" includes:
91 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue
92 Code; and
93 (b) other organizations that are taxed as corporations for federal income tax purposes

94 under the Internal Revenue Code.

95 (11) "Dividend" means any distribution, including money or other type of property,
96 made by a corporation to its shareholders out of its earnings or profits accumulated after
97 December 31, 1930.

98 (12) (a) "Doing business" includes any transaction in the course of its business by a
99 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in
100 this state.

101 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:

102 (i) the right to do business through incorporation or qualification;

103 (ii) the owning, renting, or leasing of real or personal property within this state; and

104 (iii) the participation in joint ventures, working and operating agreements, the
105 performance of which takes place in this state.

106 (13) "Domestic corporation" means a corporation that is incorporated or organized
107 under the laws of this state.

108 (14) (a) "Farmers' cooperative" means an association, corporation, or other
109 organization that is:

110 (i) (A) an association, corporation, or other organization of:

111 (I) farmers; or

112 (II) fruit growers; or

113 (B) an association, corporation, or other organization that is similar to an association,
114 corporation, or organization described in Subsection (14)(a)(i)(A); and

115 (ii) organized and operated on a cooperative basis to:

116 (A) (I) market the products of members of the cooperative or the products of other
117 producers; and

118 (II) return to the members of the cooperative or other producers the proceeds of sales
119 less necessary marketing expenses on the basis of the quantity of the products of a member or
120 producer or the value of the products of a member or producer; or

121 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
122 other persons; and

123 (II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at
124 actual costs plus necessary expenses to the members of the cooperative or other persons.

(b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define:

(A) the terms:

(I) "member"; and

(II) "producer"; and

(B) what constitutes an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (14)(a)(i)(A).

(ii) The rules made under this Subsection (14)(b) shall be consistent with the filing requirements under federal law for a farmers' cooperative.

(15) "Foreign corporation" means a corporation that is not incorporated or organized under the laws of this state.

(16) (a) "Foreign operating company" means a corporation [~~that~~] if:

(i) the corporation is incorporated in the United States; [~~and~~]

(ii) at least 80% [~~or more of whose~~] of the corporation's business activity, as determined under Section 59-7-401, is conducted outside the United States[~~;~~]; and

(iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income -- Utah UDITPA Provisions, the corporation has:

(A) at least \$1,000,000 of payroll located outside the United States; and

(B) at least \$2,000,000 of property located outside the United States.

(b) "Foreign operating company" does not include a corporation that qualifies for the Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.

(17) (a) "Foreign real estate investment trust" means:

(i) a business entity organized outside the laws of the United States if:

(A) at least 75% of the business entity's total asset value at the close of the business entity's taxable year is represented by:

(I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;

(II) cash or cash equivalents; or

(III) one or more securities issued or guaranteed by the United States;

(B) the business entity is:

(I) not subject to income taxation:

- 156 (Aa) on amounts distributed to the business entity's beneficial owners; and
- 157 (Bb) in the jurisdiction in which the business entity is organized; or
- 158 (II) exempt from income taxation on an entity level in the jurisdiction in which the
- 159 business entity is organized;
- 160 (C) the business entity distributes at least 85% of the business entity's taxable income,
- 161 as computed in the jurisdiction in which the business entity is organized, to the holders of the
- 162 business entity's:
- 163 (I) shares or beneficial interests; and
- 164 (II) on an annual basis;
- 165 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively
- 166 by a single person:
- 167 (Aa) the voting power of the business entity; or
- 168 (Bb) the value of the shares or beneficial interests of the business entity; or
- 169 (II) the shares of the business entity are regularly traded on an established securities
- 170 market; and
- 171 (E) the business entity is organized in a country that has a tax treaty with the United
- 172 States; or
- 173 (ii) a listed Australian property trust.
- 174 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 175 commission may make rules defining:
- 176 (i) "cash or cash equivalents";
- 177 (ii) "established securities market"; or
- 178 (iii) "listed Australian property trust."
- 179 (18) "Income" includes losses.
- 180 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective
- 181 during the year in which Utah taxable income is determined.
- 182 (20) "Nonbusiness income" is as defined in Section 59-7-302.
- 183 (21) "Real estate investment trust" is as defined in Section 856, Internal Revenue Code.
- 184 (22) "Related expenses" means:
- 185 (a) expenses directly attributable to nonbusiness income; and
- 186 (b) the portion of interest or other expense indirectly attributable to both nonbusiness

and business income which bears the same ratio to the aggregate amount of such interest or other expense, determined without regard to this Subsection (22), as the average amount of the asset producing the nonbusiness income bears to the average amount of all assets of the taxpayer within the taxable year.

(23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under Section 168, Internal Revenue Code.

(24) "S corporation" means an S corporation as defined in Section 1361, Internal Revenue Code.

(25) "State of the United States" includes any of the 50 states or the District of Columbia.

(26) (a) "Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the adjusted income is computed.

(b) In the case of a return made for a fractional part of a year under this chapter or under rules prescribed by the commission, "taxable year" includes the period for which such return is made.

(27) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

(28) "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Section 59-7-401.

(29) "Unadjusted income" means federal taxable income as determined on a separate return basis before intercompany eliminations as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions for dividends received.

(30) (a) "Unitary group" means a group of corporations that:

(i) are related through common ownership; and

(ii) by a preponderance of the evidence as determined by a court of competent jurisdiction or the commission, are economically interdependent with one another as demonstrated by the following factors:

(A) centralized management;

(B) functional integration; and

(C) economies of scale.

(b) "Unitary group" includes a captive real estate investment trust.

218 (c) "Unitary group" does not include an S corporation.

219 (31) "United States" includes the 50 states and the District of Columbia.

220 (32) "Utah net loss" means the current year Utah taxable income before Utah net loss
221 deduction, if determined to be less than zero.

222 (33) "Utah net loss deduction" means the amount of Utah net losses from other taxable
223 years that may be carried back or carried forward to the current taxable year in accordance with
224 Section 59-7-110.

225 (34) (a) "Utah taxable income" means Utah taxable income before net loss deduction
226 less Utah net loss deduction.

227 (b) "Utah taxable income" includes income from tangible or intangible property located
228 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign
229 commerce.

230 (35) "Utah taxable income before net loss deduction" means apportioned income plus
231 nonbusiness income allocable to Utah net of related expenses.

232 (36) (a) "Water's edge combined report" means a report combining the income and
233 activities of:

234 (i) all members of a unitary group that are:

235 (A) corporations organized or incorporated in the United States, including those
236 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
237 936, Internal Revenue Code, in accordance with Subsection (36)(b); and

238 (B) corporations organized or incorporated outside of the United States meeting the
239 threshold level of business activity; and

240 (ii) an affiliated group electing to file a water's edge combined report under Subsection
241 59-7-402(2).

242 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
243 Rico and possession tax credit provided in Section 936, Internal Revenue Code, is part of a
244 unitary group.

245 (37) "Worldwide combined report" means the combination of the income and activities
246 of all members of a unitary group irrespective of the country in which the corporations are
247 incorporated or conduct business activity.

248 Section 2. Section **59-7-105** is amended to read:

59-7-105. Additions to unadjusted income.

In computing adjusted income the following amounts shall be added to unadjusted income:

(1) interest from bonds, notes, and other evidences of indebtedness issued by any state of the United States, including any agency and instrumentality of a state of the United States;

(2) the amount of any deduction taken on a corporation's federal return for taxes paid by a corporation:

(a) to Utah for taxes imposed by this chapter; and

(b) to another state of the United States, a foreign country, a United States possession, or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or exercising its corporate franchise, including income, franchise, corporate stock and business and occupation taxes;

(3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and (2)(a);

(4) capital losses that have been deducted on a Utah corporate return in previous years;

(5) any deduction on the federal return that has been previously deducted on the Utah return;

(6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;

(7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated technological equipment;

(8) charitable contributions, to the extent deducted on the federal return when determining federal taxable income;

(9) the amount of gain or loss determined under Section 59-7-114 relating to a target corporation under Section 338, Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;

(10) the amount of gain or loss determined under Section 59-7-115 relating to corporations treated for federal purposes as having disposed of its assets under Section 336(e), Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;

(11) adjustments to gains, losses, depreciation expense, amortization expense, and similar items due to a difference between basis for federal purposes and basis as computed

280 under Section 59-7-107;

281 (12) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
282 Incentive Program, from the account of a corporation that is an account owner as defined in
283 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount
284 withdrawn from the account of the corporation that is the account owner:

285 (a) is not expended for higher education costs as defined in Section 53B-8a-102; and

286 (b) is subtracted by the corporation:

287 (i) that is the account owner; and

288 (ii) in accordance with Subsection 59-7-106[~~(18)~~] (1)(r); and

289 (13) the amount of the deduction for dividends paid, as defined in Section 561, Internal
290 Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in
291 computing the taxable income of a captive real estate investment trust, if that captive real estate
292 investment trust is subject to federal income taxation.

293 Section 3. Section **59-7-106** is amended to read:

294 **59-7-106. Subtractions from unadjusted income.**

295 (1) In computing adjusted income the following amounts shall be subtracted from
296 unadjusted income:

297 ~~[(1)]~~ (a) the foreign dividend gross-up included in gross income for federal income tax
298 purposes under Section 78, Internal Revenue Code;

299 ~~[(2)]~~ (b) subject to Subsection (2), the net capital loss, as defined for federal purposes,
300 if the taxpayer elects to deduct the net capital loss on the ~~[current Utah return. The deduction~~
301 ~~shall be made by claiming the deduction on the current Utah return which shall be filed by the~~
302 ~~due date of the return, including extensions. For the purposes of this Subsection (2) all capital~~
303 ~~losses in a given year must be:]~~ return filed under this chapter for the taxable year for which the
304 net capital loss is incurred;

305 ~~[(a) deducted in the year incurred; or]~~

306 ~~[(b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue~~
307 ~~Code;]~~

308 ~~[(3)]~~ (c) the decrease in salary expense deduction for federal income tax purposes due
309 to claiming the federal ~~[jobs]~~ work opportunity credit under Section 51, Internal Revenue
310 Code;

311 ~~[(4)]~~ (d) the decrease in qualified research and basic research expense deduction for
312 federal income tax purposes due to claiming the federal ~~[research and development]~~ credit for
313 increasing research activities under Section 41, Internal Revenue Code;

314 ~~[(5)]~~ (e) the decrease in qualified clinical testing expense deduction for federal income
315 tax purposes due to claiming the federal ~~[orphan drug credit under Section 28]~~ credit for
316 clinical testing expenses for certain drugs for rare diseases or conditions under Section 45C,
317 Internal Revenue Code;

318 ~~[(6)]~~ (f) any decrease in any expense deduction for federal income tax purposes due to
319 claiming any other federal credit;

320 ~~[(7)]~~ (g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b)
321 and (2)(b);

322 ~~[(8)]~~ (h) any income on the federal ~~[corporate]~~ corporation income tax return that has
323 been previously taxed by Utah;

324 ~~[(9) amounts]~~ (i) an amount included in federal taxable income that ~~[are]~~ is due to
325 ~~[refunds of taxes]~~ a refund of a tax, including a franchise tax, an income tax, a corporate stock
326 and business tax, or an occupation tax;

327 (i) if that tax is imposed for the privilege of:

328 (A) doing business~~;~~_; or

329 (B) exercising a corporate franchise~~;~~_; ~~including income, franchise, corporate stock and~~
330 ~~business and occupation taxes~~_;;

331 (ii) if that tax is paid by the corporation to:

332 (A) Utah~~;~~_;

333 (B) another state of the United States~~;~~_;

334 (C) a foreign country~~;~~_;

335 (D) a United States possession~~;~~_; or

336 (E) the Commonwealth of Puerto Rico; and

337 (iii) to the extent that ~~[the taxes were]~~ tax was added to unadjusted income under
338 Section 59-7-105;

339 ~~[(10)]~~ (j) a charitable ~~[contributions]~~ contribution, to the extent the charitable
340 contribution is allowed as a subtraction under Section 59-7-109;

341 ~~[(11)-(a)]~~ (k) subject to Subsection (3), 50% of ~~[the dividends deemed]~~ a dividend

342 considered to be received or received from [~~subsidiaries which are members of the~~] a
343 subsidiary that:

344 (i) is a member of a unitary group [~~and are~~];

345 (ii) is organized or incorporated outside of the United States [~~unless such subsidiaries~~
346 ~~are~~]; and

347 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403[-]; [~~In~~
348 ~~arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the~~
349 ~~dividends deemed received or received, the expense directly attributable to those dividends.~~
350 ~~Interest expense attributable to excluded dividends shall be determined by multiplying interest~~
351 ~~expense by a fraction, the numerator of which is the taxpayer's average investment in such~~
352 ~~dividend paying subsidiaries, and the denominator of which is the taxpayer's average total~~
353 ~~investment in assets;~~]

354 [~~(b) in determining income apportionable to this state, a portion of the factors of a~~
355 ~~foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be~~
356 ~~included in the combined report factors. The portion to be included shall be determined by~~
357 ~~multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the~~
358 ~~numerator of which is the amount of the dividend paid by the foreign subsidiary which is~~
359 ~~included in adjusted income, and the denominator of which is the current year earnings and~~
360 ~~profits of the foreign subsidiary as determined under the Internal Revenue Code;~~]

361 ~~[(12)(a)]~~ (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted
362 income of a foreign operating company [~~unless the taxpayer has elected to file a worldwide~~
363 ~~combined report as provided in Section 59-7-403. For purposes of this Subsection (12), when~~
364 ~~calculating the adjusted income of a foreign operating company, a foreign operating company~~
365 ~~may not deduct the subtractions allowable under this Subsection (12) and Subsection (11)];~~

366 [~~(b) in determining income apportionable to this state, the factors for a foreign~~
367 ~~operating company shall be included in the combined report factors in the same percentage its~~
368 ~~adjusted income is included in the combined adjusted income;~~]

369 ~~[(13)]~~ (m) the amount of gain or loss [~~which~~] that is included in unadjusted income but
370 not recognized for federal purposes on stock sold or exchanged by a member of a selling
371 consolidated group as defined in Section 338, Internal Revenue Code, if an election has been
372 made [~~pursuant to~~] in accordance with Section 338(h)(10), Internal Revenue Code;

373 ~~[(14)]~~ (n) the amount of gain or loss ~~[which]~~ that is included in unadjusted income but
374 not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation
375 ~~[pursuant to]~~ in accordance with Section 336(e), Internal Revenue Code, if an election under
376 Section 336(e), Internal Revenue Code, has been made for federal purposes;

377 ~~[(15)(a) adjustments to gains, losses, depreciation expense, amortization expense, and~~
378 ~~similar items]~~

379 (o) subject to Subsection (5), an adjustment to the following due to a difference
380 between basis for federal purposes and basis as computed under Section 59-7-107~~[-and]~~;

381 ~~[(b) if there has been a reduction in federal basis for a federal tax credit where there is~~
382 ~~no corresponding Utah tax credit, the amount of the reduction in basis shall be allowed as an~~
383 ~~expense in the year of the federal credit;]~~

384 (i) an amortization expense;

385 (ii) a depreciation expense;

386 (iii) a gain;

387 (iv) a loss; or

388 (v) an item similar to Subsections (1)(o)(i) through (iv);

389 ~~[(16) any]~~ (p) an interest expense that is not deducted on ~~[the]~~ a federal ~~[corporate]~~
390 corporation income tax return under Section 265(b) or 291(e), Internal Revenue Code;

391 ~~[(17)]~~ (q) 100% of ~~[the]~~ dividends received from ~~[subsidiaries which are insurance~~
392 ~~companies]~~ a subsidiary that is an insurance company if that subsidiary that is an insurance
393 company is:

394 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and ~~[are]~~

395 (ii) under common ownership;

396 ~~[(18)]~~ (r) subject to Subsection 59-7-105(12), the amount of a qualified investment as
397 defined in Section 53B-8a-102 that:

398 ~~[(a)]~~ (i) a corporation that is an account owner as defined in Section 53B-8a-102 makes
399 during the taxable year;

400 ~~[(b)]~~ (ii) the corporation described in Subsection ~~[(18)(a)]~~ (1)(r)(i) does not deduct on a
401 federal corporation income tax return; and

402 ~~[(c)]~~ (iii) does not exceed the maximum amount of the qualified investment that may
403 be subtracted from unadjusted income for a taxable year in accordance with Subsections

53B-8a-106(1)(d) and (f); and

~~[(19)]~~ (s) for purposes of income included in a combined report under Part 4, Combined Reporting, the entire amount of the dividends a member of a unitary group receives or is considered to receive from a captive real estate investment trust.

(2) For purposes of Subsection (1)(b):

(a) the subtraction shall be made by claiming the subtraction on a return filed:

(i) under this chapter for the taxable year for which the net capital loss is incurred; and

(ii) by the due date of the return, including extensions; and

(b) a net capital loss for a taxable year shall be:

(i) subtracted for the taxable year for which the net capital loss is incurred; or

(ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue Code.

(3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a taxpayer shall first subtract from a dividend considered to be received or received an expense directly attributable to that dividend as determined under Subsection (3)(b).

(b) For purposes of Subsection (3)(a), an interest expense that is directly attributable to a dividend is calculated by multiplying the interest expense by a fraction:

(i) the numerator of which is the taxpayer's average investment in the dividend paying subsidiaries; and

(ii) the denominator of which is the taxpayer's average total investment in assets.

(c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in determining income apportionable to this state, a portion of the factors of a foreign subsidiary that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the combined report factors as provided in this Subsection (3)(c).

(ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be included in the combined report factors is calculated by multiplying each factor of the foreign subsidiary by a fraction:

(A) not to exceed 100%; and

(B) (I) the numerator of which is the amount of the dividend paid by the foreign subsidiary that is included in adjusted income; and

435 (II) the denominator of which is the current year earnings and profits of the foreign
436 subsidiary as determined under the Internal Revenue Code.

437 (4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under
438 Subsection (1)(l):

439 (i) if the taxpayer elects to file a worldwide combined report as provided in Section
440 59-7-403; or

441 (ii) for the following:

442 (A) income generated from intangible property; or

443 (B) a capital gain, dividend, interest, rent, royalty or other similar item that is generated
444 from an asset held for investment and not from a regular business trading activity.

445 (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating
446 company:

447 (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

448 (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a
449 transaction that occurs between members of a unitary group.

450 (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining
451 income apportionable to this state, the factors for a foreign operating company shall be
452 included in the combined report factors in the same percentages as the foreign operating
453 company's adjusted income is included in the combined adjusted income.

454 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
455 commission may by rule define what constitutes:

456 (i) income generated from intangible property; or

457 (ii) a capital gain, dividend, interest, rent, royalty or other similar item that is generated
458 from an asset held for investment and not from a regular business trading activity.

459 (5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of
460 a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax
461 credit is claimed if:

462 (i) there is a reduction in federal basis for a federal tax credit; and

463 (ii) there is no corresponding tax credit allowed in this state.

464 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
465 commission may by rule define what constitutes an item similar to Subsections (1)(o)(i)

466 through (iv).

467 Section 4. **Effective date.**

468 This bill takes effect for a taxable year beginning on or after January 1, 2011.